

Programmatic Agreement
Among
The U.S. Army Corps of Engineers, Omaha District,
The State Historic Preservation Officer of North Dakota,
The Advisory Council on Historic Preservation,
The Bureau of Reclamation, Bismarck Office,
Turtle Mountain Band of Chippewa Indians, and
The Three Affiliated Tribes

WHEREAS, the U.S. Army Corps of Engineers, Omaha District (Corps) manages the release of water at all times from the Pipestem Reservoir, manages land surrounding Pipestem Reservoir, near Jamestown, North Dakota, and manages the release of water from the Jamestown Reservoir when the level of the pool reaches the flood control zone (pool elevations between 1429.8 and 1454 feet above mean sea level (amsl)), as defined in the 1975 Field Working Agreement for Flood Control Regulation of Jamestown Flood Storage; and

WHEREAS the Corps has completed a Water Control Plan Review and Update on Jamestown and Pipestem Reservoir, and an Environmental Assessment dated July 2000 on the Review and Update, and has received input on them from state and Federal agencies and the public through public meetings and other means, and will revise the Water Control Manual; and

WHEREAS, the U.S. Bureau of Reclamation (Reclamation), due to its responsibility to manage jointly the water releases at Jamestown Reservoir (excepting flood control releases by the Corps), concurs with the Corps' Water Control Plan; and

WHEREAS the Corps' control of water from the Pipestem Reservoir, its management of land surrounding the Pipestem Reservoir, and its control of water at flood control levels at Jamestown Reservoir constitute undertakings for which the Corps is responsible for complying with Section 106 of the National Historic Preservation Act (16 U.S. C. 470f); and

WHEREAS the Corps has determined that historic properties may be adversely affected by these undertakings; and

WHEREAS the Corps has consulted with the Advisory Council on Historic Preservation (ACHP), the North Dakota State Historic Preservation Officer (ND SHPO), and Reclamation to determine that it would be advantageous to develop and implement a Programmatic Agreement (PA) in accordance with 36 CFR 800.14(b) to facilitate the Corps' conduct of these undertakings and compliance with Section 106; and

WHEREAS, the Corps has invited the Turtle Mountain Band of Chippewa Indians, the Three Affiliated Tribes, the Standing Rock Sioux Tribe, Sisseton-Wahpeton Sioux Tribes, Spirit Lake Sioux Tribe, Assiniboine and Sioux Tribes of Fort Peck, Flandreau

Santee Sioux Tribe, and Santee Sioux Tribe to participate in the consultations to develop this PA and to concur in it.

WHEREAS, the above tribes have been invited to participate, not all have chosen to do so at this time. Should they decide to participate in the future, they are welcome to sign this agreement.

NOW THEREFORE, the Corps, ACHP, and ND SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy the Corps' Section 106 responsibilities for the above-cited undertakings.

STIPULATIONS:

The Corps shall ensure that the following stipulations are implemented:

1.a. The Area of Potential Effect (APE) has been defined as the land owned and managed by the Corps surrounding Pipestem Reservoir, an area of land on both sides of Pipestem Creek to its confluence with the James River which could be subject to erosional impacts, and the pool elevations of Jamestown Reservoir between the flood pool operation and the top of the normal conservation pool (as defined in the Reclamation-Corps agreement, 1975 Field Working Agreement for Flood Control Regulation of Jamestown Reservoir Flood Storage) (see enclosed map),

1.b. Work off-Corps land will require the use of funds other than Operations and Maintenance and would also require landowner permission.

1.c. The term "site" refers to all known cultural resources, isolated finds, and Traditional Cultural Properties (TCP). A cultural resource site is defined as a location of past human activity that took place over 50 years ago and which left physical traces of that activity in the form of (1) an intact cultural feature, (2) five or more artifacts found within about 60 meters of each other, and/or (3) an intact subsurface cultural deposit regardless of the number of artifacts. A location with four or fewer artifacts and identified by the archeologist(s) as representing an area of very limited past activity may be recorded as an isolated find. In this instance, site leads are identified as a location with four or fewer visible surface artifacts which, in the professional judgment of the field personnel, is likely to be only a limited surface expression of a former occupation area where most of the artifacts are not visible (i.e., still buried). TCPs are defined as traditional places of cultural value, tradition, belief, or practice – or the focus of lifeways, arts, crafts, and social institutions of importance as identified by a living culture or community.

2. The Corps shall conduct a Class I literature and records search at the ND SHPO and the Corps' Riverdale, North Dakota office.

3. The Corps shall conduct a pedestrian Class III survey using the Secretary of Interior's Standards and Guidelines and the North Dakota SHPO Manual for Cultural Resource

Inventory Projects for all Corps lands surrounding Pipestem Reservoir for architectural, historic, prehistoric, and TCP sites **by June of 2004**. The TCP inventories shall be conducted by each Tribe in conjunction with the Class III inventory. (Separate reports would be written for each TCP inventory and for the Class III inventory).

All previously recorded sites and site leads within the APE shall be visited. NDCRS site forms will be updated. As part of the site condition assessment, all known and newly recorded sites shall be assessed for erosional impact. The inventory shall include a completed site form for Pipestem Dam, constructed in 1972-73 along with photographs and a history of the dam. Revisiting and updating forms for old sites will be complete by September of 2003. Site forms for any newly recorded sites and a site condition assessment for each site will be complete by July 2004. The inventory/site condition assessment will be submitted to the ND SHPO and any other interested parties by October 15, 2004.

Sites will be located by Global Positioning System (GPS), **a Corps site visit form shall be completed**, and all this information shall be added to the Corps geographic information system (GIS) by October 31 of 2003 unless they are already updated in that system. **The site updates and newly recorded sites, if any, will be reviewed by the ND SHPO as submitted. In addition, the updates should be reviewed by all other interested parties.**

4. The Corps shall consult with all participating Tribes regarding the inclusion of TCPs into the Cultural Resources Management Plan (CRMP). **In addition, the Corps shall invite Tribes to participate in the development of the CRMP.**

5. Based on the results of the survey and consultation with ND SHPO, ACHP, and tribal officials, the Corps shall prepare a CRMP for Pipestem Reservoir by the end of 2004. The Corps shall consult with ND SHPO, Tribal officials, and the ACHP on the draft and final versions of the document.

6. The Corps shall implement the Pipestem CRMP. The CRMP will be updated as needed, based on mutual agreement of the parties.

7. The Corps shall determine the National Register of Historic Places eligibility for all known and newly discovered sites around Pipestem Reservoir by the end of 2005. The Corps shall conduct the National Register testing using the Secretary of Interior's Standards and Guidelines and the North Dakota SHPO Manual for Cultural Resource Inventory Projects for all Corps lands surrounding Pipestem Reservoir for architectural, historic, prehistoric, and TCP sites. Besides eligibility, the significance, and potential future impact(s), including, but not limited to, effects from the proposed project will be addressed by the Corps. The Corps shall update the CRMP based on the outcome of the National Register testing. The Corps shall consult with all parties concerning eligibility determinations. If any portion of the APE is eligible for designation as a historic district, it shall be nominated as such.

8. The Corps shall assist Reclamation in designing bank stabilization plans, within the APE (as defined above and on the map), as Corps authorities and Corps funding permit. The purpose of the bank stabilization is to protect adversely impacted historic properties. The Corps and Reclamation shall discuss this at the annual meeting, as defined in the 1975 Working Agreement. The Corps shall provide the parties to this agreement with an advance agenda each year.

9. The Corps shall provide annual progress reports that summarize what was done that year, identify any problems in carrying out the agreement, and describe what is planned for next year. The reports are due annually to each signatory and concurring party, **no later than December 15.**

10. Dispute Resolution

Should any signatory, consulting party, or member of the public object to the Corps' manner of implementing this Agreement, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall notify the other signatories and forward all documentation relevant to the objection to the Council. The Council shall either: provide the Corps with recommendations which the Corps shall take into account in reaching a final decision regarding the dispute; or notify the Corps that it will comment pursuant to 36 CFR 800.7 and proceed to comment. The Corps shall respond pursuant to 36 CFR 800.7.

11. Amendment

Any party to this Agreement may request that it be amended, whereupon the consulting parties to this Agreement shall consult to in accordance with 36 CFR 800.14 to consider an amendment. The amended Agreement shall be executed in the same manner as this Agreement.

12. Termination

This Agreement may be terminated by any signatory, provided that at least 45 days notice of intent to terminate and the reasons for termination are given to all signatories and concurring parties. During this period, the consulting parties shall consult to amend the Agreement. Termination or failure to carry out the terms of this Agreement shall require the Corps to comply with 36 CFR 800.1 through 800.6 for each undertaking that may have the potential to affect historic properties.

13. Duration

Unless amended or terminated, this Agreement shall remain in effect for a period of 10 years from the date of final signature on the Agreement.

Execution of this PA by the Corps and the Council and implementation of its terms is evidence that the Corps has afforded the Council an opportunity to comment on the flood control program and its effect on historic properties.

Signatories

Colonel Kurt Ubbelohde, District Engineer

Date _____

Merlan E. Paaverud, Jr.,
State Historic Preservation Officer

Date _____

John M. Fowler, Executive Director
Advisory Council on Historic Preservation

Date _____

Concurring Parties

Dennis Breitzman, Area Manager
Bureau of Reclamation, Dakota Area Office

Date _____

Richard Monette, Chairman
Turtle Mountain Band of Chippewa

Date _____

Tex Hall, Chairman
Three Affiliated Tribes

Date _____

Arlyn Headdress, Chairman
Assiniboine and Sioux Tribes of Fort Peck Tribes

Date _____

Charles Murphy, Chairman
Standing Rock Sioux Tribe

Date _____

Chairman
Sisseton-Wahpeton

Date _____

Chairman
Spirit Lake Tribes

Date _____